

Before the
**MARYLAND COMMISSION ON CAPITAL
PUNISHMENT**

Written Testimony of
The Honorable Charles McC. Mathias, Jr.

Annapolis, MD

September 5, 2008

Chairman Civiletti, and members of the Commission:

Thank you for the opportunity to share my perspective on the system of capital punishment.

You have heard the views of many experts on the specific questions that the General Assembly charged you to study. You have also heard the invaluable perspectives of law enforcement officers, of people who were wrongfully convicted and incarcerated for many years, and of the families of murder victims. I can add but little to what they have said.

I offer instead the perspective of a life-long Marylander; of a member of the bar of this state for almost sixty years; and of one who had the honor to represent his fellow Marylanders in three legislative bodies over a period of nearly thirty years. Through all those years, the topic of capital punishment has been a recurring theme in public life. It is a question that has been debated over and over again in this State, on the national level, and indeed around the world. From this long history, you as Commission members must seek to glean whatever wisdom you can.

Respect for the principle of full disclosure leads me to begin with a brief memory. Regularly, as I was growing up in Frederick County, I heard the

words of the Book of Common Prayer: "The Lord desireth not the death of the sinner, but rather that he turn from his wickedness and live." With such preparation, I am forced to admit that my objectivity may be subject to question. But I acknowledge as well that this stance begs the further question of what is to be done with those who fail to accept the opportunity extended by the prayer to turn from "wickedness."

Such complexities persuade me that the people of this State will never reach a consensus on the morality of capital punishment. Instead, I believe it will be more fruitful to focus on some of the more practical aspects of the question. We must consider what we know to be the conventional rules governing human behavior. We must assess the costs of operating a system of capital punishment, and whether that system produces sufficient benefits to justify that cost. And finally, we must demonstrate what the Declaration of Independence called "a decent respect for the opinion of mankind."

It is generally recognized that the overwhelming majority of murders are committed within a circle of family and friends. The motive for the act is likely personal and urgent. Under such circumstances, the deterrent offered by the threat of capital punishment is small. Whether there is any category of murder for which the death penalty might serve as a realistic deterrent – and if so, how small that category is – are questions to which there is no clear answer.

What has become clear in recent years is the extraordinary cost of prosecuting a death penalty case, and the protracted nature of the entire judicial process in such cases. From investigation through trial, followed by appeal, post-conviction proceedings, and the ultimate issues of clemency, the death warrant, and even the means adopted to carry out the penalty, these cases are far more costly than all others. The reasons for these costs – in time, money, judicial resources, and the patience of witnesses and of the families of victims – are understandable: Supreme Court decisions have imposed detailed standards for death penalty cases. This capital punishment jurisprudence demonstrates both an extraordinary concern for human life, and an extraordinary effort to eliminate unfairness from the system by which the decision to take a life is made. The success of this effort is debatable, but its costs are undeniable. And in adding up the costs, we must also consider the "opportunity costs" – how these resources could otherwise have been spent to make our streets safer, to aid victims of crime, or to deal more effectively with hardened criminals.

Has the public received a benefit that justifies these extraordinary costs? If we look for that benefit in terms of safer communities, or even lower rates of murder and other violent crimes, it is very difficult to draw any connection.

Meanwhile, the evidence mounts that our criminal justice system, even with the additional safeguards used in death penalty cases, is all too fallible. This commission has heard the testimony of men who were falsely convicted of crimes, and only exonerated many years later. The results of DNA testing may demonstrate that false convictions have occurred, but it is not a new insight. The question remains whether even a very small percentage of unjust convictions, while perhaps an unavoidable side effect in the criminal justice system in general, is tolerable in death penalty cases in particular.

Finally, while this Commission's recommendations will apply only to this State, we cannot ignore how this issue is viewed in the wider world. In the last speech I made on this topic on the floor of the U.S. Senate, in 1984, I noted that the French Minister of Justice had summarized the situation in an arresting image: "The map of freedom in the world ... fits almost exactly together with the map of abolition of the death penalty. The map of nations which retain the death penalty nearly coincides with the map of tyranny. The most glaring exception to this general principle is the United States." This image is probably even more accurate today than it was 24 years ago. Of course we should not slavishly imitate the laws or policies of other democratic countries; but we should have the common sense to ask ourselves whether there is anything we can learn from their experience.

I hope these reflections will assist this Commission in its recommendations. There are strong moral convictions on both sides of the issue, convictions that are worthy of respect and admiration. Your task is not an easy one. But perhaps it can be made at least a bit easier by putting aside the moral issues, on which we may never agree, and focusing on some of the more practical questions that I have referred to. What is it costing the State of Maryland to continue to prosecute death penalty cases? Are Marylanders receiving clear benefits that justify these extraordinary costs? And what does the retention of capital punishment – in Maryland as well as in other states – mean for our country's position in the world, and for its "decent respect for the opinions of mankind"? From my perspective, at least, the answers to these questions are clear, and they all point away from continued reliance on capital punishment in the courts of our State.

Respectfully submitted,

Charles McC. Mathias, Jr.

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